

● *Preserving the freedom to achieve, to compete and to innovate.*

December 9, 2002

Kelli Farmer
Federal Communications Commission
Room 4-C740
445 12th Street, SW
Washington, DC 20554

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DEC - 9 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CG Docket No. 02-278; CC Docket No. 92-90

The Association for Competitive Technology (ACT) submits the following comments to the Notice of Proposed Rulemaking (NPRM) on Implementing the Telephone Consumer Protection Act of 1991. In the NPRM the Commission has asked for comments on the issue of "whether the Commission should refine its existing rules, or adopt additional rules, on the use of autodialers, prerecorded messages, and unsolicited facsimile advertisements, to account for technological developments in recent years and emerging telemarketing practices."

ACT is a trade association representing over 3,000 information technology companies and professionals. Fundamentally, ACT questions the need for regulation of a business practice in situations where customers can avoid an undesirable business practice by exercising their option to switch to another vendor.

However, if the FCC finds it necessary to create rules to reduce unsolicited fax messages, we urge the FCC to make explicit recognition or exception to allow communications regarding product quality or security concerns to customers with whom they have an established business relationship.

ACT member companies fully support the right of their customers to decide whether they want to receive marketing messages from vendors. And ACT members are committed to respect the customer's privacy preferences. However, we are just as committed to making sure that previous customers are quickly informed if the software or services they purchased are the subject of urgent quality or security concerns, such as a recently discovered software bug or vulnerability to a new computer virus.

Clearly, any rule affecting how our members may communicate with their customers is going to have a profound impact on their businesses. Any such rules should allow vendors to assume that customers want to receive communication unless and until the customer "opts-out" of communications, through prescribed means. And if our members follow the new rules in a good faith effort, they should be afforded an affirmative defense against lawsuits based on the new regulations.

¹ See, NPRM at p.25.

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ACT appreciates the opportunity to comment on this important *rulemaking*. If you have any questions please do not hesitate to contact me or Steve DelBianco, Vice President for Public Policy.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Zuck". The signature is written in a cursive, flowing style.

Jonathan Zuck
President.